IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1242 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHUNABHAI SHANKARBHAI

Versus

DIST SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 1242 of 1994

MR RR VAKIL for Petitioner No. 1

MS REETA CHANDARANA AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 08/07/2004

CAV JUDGEMENT

Shri Chunabhai Shankarbhai has filed this petition seeking prayer to issue a writ of mandamus or

certiorari directing the respondents i.e. District Superintendent of Police - respondent No. 1, Director General of Police - respondent No. 2 and State of Gujarat - respondent No. 3 to grant the benefits of higher grade scales to the petitioner according to the Government Resolution dated 5th July, 1991 and to make payment of arrears to the petitioner with appropriate rate of interest and further direct the respondents to refix the pension of the petitioner on the basis of the pay fixation done according to the Government Resolution dated 5th July, 1991.

2. The aforesaid petition was filed by the petitioner on 27.1.1994 and as per order dated 28.1.1994, the Court has issued notice made it returnable on 7.3.1994. Thereafter, as per order dated 18.3.1994, the court has issued Rule and granted interim relief in favour of petitioner. The matter has reached for final hearing before this court today.

3. On behalf of the petitioner, learned advocate for the petitioner has stated that the petitioner has joined police department as Police Constable on 19.11.1960. It is the case of the petitioner that he has completed 28 years of service on 18.11.1988. He was given promotion on 29.8.1983 to the post of Head Constable. Thereafter, the petitioner has requested for voluntary retirement and he was retired on 30.9.1989 as Second Grade Head Constable.

4. It is the case of the petitioner that Government has issued a Resolution dated 5th July, 1991, to deal with the problem of stagnation in many cadres due to absence or restricted chances of promotions. The said Resolution was regarding higher grade scales i.e. on completion of 9, 18, 27 years of service. It is the case of the petitioner that respondent has not given higher pay scale and therefore, the respondents have violated Articles 14, 16 and 226 of the Constitution of India. He has also relied upon the Government order dated 20.1.1990, by which, petitioner has been given increment from time to time i.e. Government has given notional salary to the petitioner for the year 1990, 1991, 1992, 1993 as stated in the order dated 20.1.1990 and the same is produced at Annexure - B to the petition.

5. The petitioner has also prayed for higher pay scale by his communication dated 5.11.1993, which is produced at Annexure - C to the petition.

6. It is the case of the petitioner that one Police

constable namely Mr. Chhatrasinh has joined the services of the police department 6 years later i.e. in the year 1966, the respondents have given the benefit of Government Resolution by giving him the higher scale. It is also the case of the petitioner that said Chhatrasinh joined the services in 1966 and sought voluntary retirement in 1992 i.e. after rendering 26 years of service and his last pay was fixed by giving the advantage of circular as Rs.1560-00 whereas, the petitioner has joined the services in the year 1960, sought voluntary retirement on 30th September, 1989, after rendering the services of 28 years and 10 months, the last basic of the petitioner was fixed as Rs.1240-00 which is Rs.320-00 less than the constable who was junior to him and rendered less number of of years of service than the petitioner.

7. On behalf of respondents, Ms. Reeta Chandarana learned AGP appeared. She has raised various contentions and relying upon the affidavit-in-reply filed on behalf of respondent No. 1, I have heard the matter fully on 28th June, 2004. When I have started the judgement and while dictating the judgement, it is noticed that the affidavit in reply filed by Ms. Chandarana is unaffirmed and she assured me that the affidavit in reply will be affirmed within a day or two and therefore, I have kept the matter on 2nd July, 2004 at 4.45 in Chamber. On that day, an affidavit in reply, which is referred to and rely upon by learned AGP was duly affirmed and the same was taken on record on 2nd July, 2004. In view of the same, I passed the order on that day and the judgement was kept reserved for pronouncement of judgement on 7.7.2004. This is reason the judgement of the court is pronounced on 8.7.2004.

8. In the affidavit in reply, it is the case of the respondent that the petitioner was appointed on 19.11.1960 as Police Constable. He got II grade promotion on 29.8.1983 to the post of Head Constable and at his request for voluntary retirement, the petitioner stood retired from service with effect from 30.9.1989 in II Grade Higher Scale. He thus, retired with one promotion in 1983 in 1989 i.e. without completing 9 years service in same cadre, the petitioner stood retired from service with effect from 30.9.1989 in II Grade Higher Scale. He thus, retired with one promotion in 1983 in 1989 i.e. without completing 9 years service in same cadre. It is also the case of the respondents that the Government issued Clarification dated 13.7.1992 clarifying that if an employee has obtained promotion and

his grade is changed within 9 years in the same grade scale, is not entitled to higher grade and in the present case, the petitioner has got promotion in the year 1983 and he was retired on 1989, thus, he has not completed 9 years in the same grade scale. The said clarification issued by the Government dated 13.7.1992 is annexed at Annexure - R1 to the petition. Learned AGP has also placed reliance upon the Government Resolution dated 16.8.1994 issued by the Government and same is produced at Annexure - R2 to the petition.

9. As regards contention of Mr. Chhatrasinh, it is the case of the respondents that said employee is junior to the petitioner, but he has not received any promotion and he was in the same pay scale of Rs.825-1200 for continuous 18 years, whereas, the petitioner has received promotion as Higher Grade II within a period of 9 years and therefore, it is the contention of respondents that the case of Chhatrasinh is on different footing and is not identical and same is not compared with the petitioner's case and the petitioner cannot rely upon the Government Resolution of 1991 and the respondents have prayed that the petition filed by the petitioner is required to be dismissed.

10. I have considered the case of the petitioner as well as of the respondents. In my view, it is the case of the respondent that as the petitioner has not completed continuous 9 years in same grade, as petitioner got promotion on 29.8.1983 and thereafter, he has voluntarily retired from service on 30.9.1989, he has not completed 9 years of service in same cadre and therefore, he is not entitled to the higher pay scale. The subsequent Resolutions of 1992 and 1993 are also relevant and therefore, in my view, the petitioner is not entitled to any of the benefits as prayed and he is not entitled to the prayers, which he has prayed in this petition. In view of the above, petition is dismissed with no costs. Rule is discharged. Interim relief, if any, is hereby vacated.

(K.M.Mehta,J.)
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